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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/849,734	05/19/2004	Andy Howarth	4699-002	7338
7590 Amy B. Goldsmith, Esq. Gottlieb, Rackman & Reisman, P.C. 8th Fl. 270 Madison Avenue New York, NY 10016			EXAMINER GROSSO, HARRY A	
			ART UNIT 3781	PAPER NUMBER
SHORTENED STATUTORY PERIOD OF RESPONSE		MAIL DATE	DELIVERY MODE	
3 MONTHS		12/27/2006	PAPER	

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

<b>Office Action Summary</b>	Application No.	Applicant(s)	
	10/849,734	HOWARTH ET AL.	
	Examiner	Art Unit	
	Harry A. Grosso	3781	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 19 May 2004.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-16 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-16 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 19 May 2006 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date 1/10/05.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Drawings***

1. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the feet at said base (claim 4) must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

### ***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claim 8 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 8 recites a width dimension in a range from approximately 1 to 7 and a depth dimension in a range from approximately 7 to 1/7. It is unclear what intended in this claim.

***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1-3, 6, 7, 9, 10 and 12-14 are rejected under 35 U.S.C. 102(b) as being anticipated by Prestily, Jr. (4,986,434) (Prestily).

Regarding claims 1, 13 and 15, Prestily discloses a bowl (Figures 1 and 2, column 2, lines 7-15) with a base (12), a rim (16), lateral surface (14) forming a wall and an indentation (18) in the lateral surface.

Regarding claims 2 and 3, the bowl is spherical.

Regarding claim 6, the depth dimension is less than the width dimension.

Regarding claim 7, the bowl of Prestily would have a depth dimension of at least one inch to allow its use with a conventional table fork as shown in Figure 2.

Regarding claim 9, the indentation is approachable at an angle between ten and eighty degrees (Figure 2).

Regarding claims 10, 14 and 16, the indentation is in the shape of a spoon.

Regarding claim 12, the indentation is an oval shape.

***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 8, and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Prestly.

Regarding claim 8, Prestly discloses the claimed invention except for the width and depth dimension ranges. It would have been an obvious matter of design choice to have a width dimension in a range from approximately 1 to 7 and a depth dimension in a range from approximately 7 to 1/7, since applicant has not disclosed that a width dimension in a range from approximately 1 to 7 and a depth dimension in a range from approximately 7 to 1/7 solves any stated problem or is for any particular purpose and it appears that the invention would perform equally well with a variety of width and depth values both within and outside of specified ranges and Prestly is capable of having width and depth values within the specified ranges.

Regarding claim 11, Prestly discloses the claimed invention except for the indentation forming a circular shape. It would have been an obvious matter of design choice to have a the indentation forming a circular shape, since applicant has not disclosed that having the indentation forming a circular shape solves any stated

problem or is for any particular purpose and it appears that the invention would perform equally well with the indentation in an oval shape as disclosed by Prestly.

8. Claim 4 rejected under 35 U.S.C. 103(a) as being unpatentable over Prestly in view of Rech (3,190,486). Prestly discloses the invention except for the feet at the base. Rech discloses a bowl with feet (14, Figures 1-2, column 2, lines 41-54) to provide a firm non-rocking support. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have incorporated the use of feet as disclosed by Rech in the bowl disclosed by Prestly to provide a firm non-rocking support base.

9. Claim 5 rejected under 35 U.S.C. 103(a) as being unpatentable over Prestly in view of Heiberg et al (5,169,023). Prestly discloses the invention except for a non-slip surface at the base. Heiberg et al discloses a bowl with an exterior made of a non-slip friction-enhancing material (abstract). It would have been obvious to one of ordinary skill in the art at the time the invention was made to have incorporated the use of an exterior made of a non-slip friction-enhancing material as disclosed by Heiberg et al in the bowl disclosed by Prestly to prevent the bowl from sliding on a table or support surface while in use.

10. Claims 7 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Prestly in view of Costarella et al (5,207,743).

Regarding claim 7, Prestly discloses the invention except for a depth dimension of at least one inch. Costarella et al discloses a bowl with depth dimension of one inch (column 2, lines 33-35). It would have been obvious to one of ordinary skill in the art at

the time the invention was made to have incorporated the use of a depth dimension of one inch as disclosed by Costarella et al in the bowl disclosed by Prestyly to because it is known in the art to make bowls at least one inch in depth.

Regarding claim 8, Prestyly discloses the claimed invention except for the width and depth dimension ranges. It would have been an obvious matter of design choice to have a width dimension in a range from approximately 1 to 7 and a depth dimension in a range from approximately 7 to 1/7, since applicant has not disclosed that a width dimension in a range from approximately 1 to 7 and a depth dimension in a range from approximately 7 to 1/7 solves any stated problem or is for any particular purpose and it appears that the invention would perform equally well with a variety of width and depth values both within and outside of specified ranges and Prestyly is capable of having width and depth values within the specified ranges.

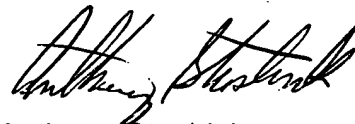
### ***Conclusion***

11. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Di Costanzo (Re. 24,575), Asphar (Des. 396,778) and Lyon et al (Des. 272,117) disclose elements of the instant application.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Harry A. Grosso whose telephone number is 571-272-4539. The examiner can normally be reached on Monday through Thursday from 7am to 4 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anthony Stashick can be reached on 571-272-4561. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



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